The University of the State of New York
Education Department

IN THE MATTER

of

PROBATION ORDER

BELIEVE SOUTHSIDE CHARTER HIGH SCHOOL

Education Law §2855 provides that the Board of Regents may place a charter school on probationary status to allow the implementation of a remedial action plan for, among other reasons, serious violations of law and/or material and substantial violations of the school's charter. Section 3.16 of the Rules of the Board of Regents delegates this authority to the Commissioner of Education. Pursuant to that authority, I find that Believe Southside Charter High School ("School") should be placed on probation until at least June 30, 2012, in accordance with the terms and conditions set forth in this decision, for substantial and material violations of the school's charter, including fiscal mismanagement, as described below.

BACKGROUND

The School was authorized by the Board of Regents ("Regents") on January 13, 2009, for a term of five years. The School opened in September 2009, at 424 Leonard Street in New York City's Community School District 14 in Brooklyn. In February 2010, the Regents approved a retroactive revision to the charter allowing the School to revise its opening date from August 24, 2009 to September 1, 2009 and to contract with a charter management organization (CMO) partner, Believe High Schools Network, Inc. ("BHSN").

BHSN is led by chief executive officer, Mr. Eddie Calderon-Melendez and board chairperson Sabrina Philson. BHSN manages a network of three schools: Williamsburg Charter High School, Believe Northside Charter High School ("BNCHS"), and Believe Southside Charter High School. BHSN, according to tax documents filed with the Internal Revenue Service, provides "administrative support services to affiliated charter schools." According to the Agreement between BHSN and the School, contracted services include financial management (including drafting policies and procedures, purchasing, account and inventory management, and financial reporting), human resources, instructional coaching, professional development, staff evaluation, and scheduling meetings of the trustees. At the time of signing, the Agreement required each school to pay 20% of all per pupil revenue to BHSN as compensation for services. The contract further established annual reductions to the fee of one percent. The CMO network, comprising the management company and the three charter schools, has overlapping boards. Mr. Melendez serves as a non-voting trustee on each of three school boards. Board chairs from each of the contracted schools serve as voting members on the board of the management company.

In September 2010, the New York State Education Department ("Department") terminated the Charter School Program Planning and Implementation Grant due to improper payments to BHSN. The Department withheld $88,801 from the School. The balance of the $546,312 award was paid out prior to the beginning of the 2010-2011 school year. According to the School's fiscal year 2010 audit report, auditors identified a deficiency in internal control over financial reporting related to the School's general ledger maintenance and reporting system and found that the School failed to monitor government grants.

By letter dated February 28, 2011, the Department notified the School of its failure to submit an annual report for the 2009-2010 school year. As of the writing of this order, the School has not submitted a complete annual report for the 2009-2010 school year. Portions of the annual report hand-delivered by School personnel to NYSED staff during the April 2011 site visit did not contain financial information for the school or the Disclosure of Financial Interest by a Charter School Trustee Reports for any of the School's trustees.

On April 26, 2011, Department staff conducted a site visit to the School. The purpose of the visit was to assess the operational, fiscal, and educational soundness of the School; to collect data pertaining to governance and financial management; and, to meet with the Trustees, staff, teachers, parents, students, and external partners working with School leadership. The site visit included interviews with these stakeholders, document review, and classroom observations. The site visit team noted a number of serious concerns which are fully detailed in the accompanying site visit report.

On August 1, 2011, the School again submitted an incomplete annual report, which omitted the Disclosure of Financial Interest by a Charter School Trustee Report for Eddie Calderon-Melendez and contained an incomplete Disclosure for Kathy Williams, but did include unaudited financial statements for the fiscal year ended June 30, 2011. In these unaudited statements, the School reported working capital (current assets – current liabilities) of ($117,213), omitted narratives or annotated assumptions explaining reconciliations for 2010-2011 with New York City Department of Education ("NYCDOE"), and, provided a budget for 255 students for 2011-2012 while billing NYCDOE for 300 students.

On or about August 10, 2011, the Department was informed by NYCDOE of the School's then-current enrollment of 222 students for the 2011-12 school year. The projected enrollment in the charter agreement for the 2011-2012 school year is 300. Only 28 ninth-grade students out of a projected 100 were enrolled at that time. As of August 19, 2011, NYCDOE reported that the School reported a total of 227 students enrolled for the 2011-2012 school year, still well below the contractually permissible 85% of enrollment. Given the negative working capital position of the School, and a network-wide pattern of significant expense-side budget variances, the long-term viability of this School is in question.

Further, in June and in August of 2011, the School billed the NYCDOE for 300 students. As such, the School has obtained the equivalent of an interest-free loan until such time as a reconciliation based on actual enrollments is demanded by NYCDOE. Given six roughly equal payments, and a per pupil allocation of $13,527, the gap (69 students) amounts to more than $150,000 per installment (excluding additional considerations for FTE's and for special education students). Should the School fail to meet its minimum enrollment targets, it may have incurred an additional liability of several hundred thousand dollars.

Based on findings made by Department staff from September 2010 through mid-August 2011, a conference call was scheduled with the board chairperson, the director of instruction, and the director of operations for Tuesday, August 16, 2011. The purpose of the call was to obtain clarifying information on the

operational and fiscal viability of the school. In particular, the Department is acutely concerned about student enrollment negative net assets and negative working capital; financial and grants management capacity at the School and BHSN; board capacity for fiscal oversight; contingency planning to restore fiscal viability; and financing obligations which may be incurred by the School to meet short-term obligations.

During this conversation, the board chair and School administrators expressed limited knowledge of the current financial condition of the School, its assets and liabilities, its long and/or short-term debt, current financing arrangements or any material aspects of the viability of the School. Although the board chair and director of instruction signed the annual report, neither demonstrated any knowledge of the financial statements therein. Both were aware that the School billed NYCDOE for 300 students; and both were aware that the School and BHSN had revised enrollment projections downward to 255. School representatives also reported that the BHSN was neither asked for, nor did they provide detailed financial statements for the 2010-2011 school year. Neither representative was aware of the School's closing balances or net assets at the end of 2010-2011 school year. The School's director of operations indicated that the School is actually given a budget by BHSN; that School administrators are told how much they have to spend by BHSN; and, that no in-house accounting is done by School staff as to the true and accurate financial condition of the School. The board chair and school leadership team stated that a formal review of BHSN would be conducted on Monday, August 22, 2011. The board chair subsequently rescheduled the August 22, 2011 board meeting to September 6, 2011, because the original meeting had not been publicly noticed. The outcome of this review is being requested as part of the Remedial Action Plan described below.

VIOLATIONS

1. **Governance.** Section 2.12 of the charter and Section 2853(1)(f) of the Education Law state that the School's board of trustees "shall have final authority for policy and operational decisions of the school". The School's board has not fulfilled its responsibility to have final authority for policy and operational decisions of the School as required by Education Law. Specifically,
 a. The School's board of trustees has not acted pursuant to its own bylaws or Education Law Section 226. In particular, the School's bylaws call for a minimum of nine regular meetings per year. The School's board of trustees met only four times (July 26, 2010, February 23, 2011, May 2, 2011, and June 6, 2011) between July 1, 2010 and June 30, 2011. Minutes for these four meetings were provided to the Department by the School. No meetings of the board were convened for almost seven consecutive months (July 26, 2010 through February 23, 2011).
 b. The board is operating without the standing committees (Executive; Finance; and Educational and Accountability) and officers (there is no Secretary, or Treasurer) called for in its by-laws and necessary to effectively oversee all aspects of the School. Additionally, the School does not have the required minimum of five voting members as required by its bylaws and Education Law Section 226.
 c. In the Department's report on its April 26, 2011 site visit to the School, site visit team members found that the School "provided limited evidence of effective governance, inclusive of board membership, accountability, oversight, and development. The BOT is not fully responsible to the community it serves." Additional supporting details are provided in the site visit report and in violation #2 below.
 d. Because the School's board has no treasurer, the School's board chair has stated that she is responsible for fiscal oversight on behalf of the board. In conversations during the April 26, 2011 site visit and during a follow-up phone call on August 11, 2011, the board chair—the only

voting member of the board who was available to speak—displayed an alarming lack of familiarity with the fiscal issues facing the School, including the School's current financial condition, its assets and liabilities, its long and/or short-term debt, current financing arrangements or any material aspects of the viability of the School. Although the board chair signed the annual report, neither demonstrated any knowledge of the financial statements contained therein.

e. Sections 2.12 (d) and 6.1(f) of the charter agreement requires the Board to require each trustee to annually submit a Disclosure of Financial Interest by a Charter School Trustee Report as part of the School's annual report to the Regents. No such forms were submitted with the annual report for the 2009-2010 school year. Moreover, only three approved trustees have submitted disclosure forms for the fiscal year ending June 30, 2011. The Department notes this provision of the charter agreement further states, "In the event that any Trustee fails to file a report within thirty (30) days of its due date of August 1, or such report is in material respects incomplete, misleading or untruthful, and the Regents and/or their agents inform the Board of its determination in this regard, the Charter School, notwithstanding any provision of its By-laws, shall in a timely fashion remove such Trustee pursuant to a vote of the Board and the failure of the Board to so act shall be a material violation of the Charter and be subject to further action in accordance with law." As of the writing of this order, for 2010-2011, the Disclosure of Financial Interest by a Charter School Trustee Report for Eddie Calderon-Melendez has still not been submitted and the Disclosure Reports for Kathy Williams was incomplete. No Disclosure Reports for any trustees have been received for the 2009-2010 school year.

2. **Finance.** Section 5.1 of the School's charter agreement provides that the School "shall at all times maintain appropriate management and financial controls." The School has not maintained appropriate management and financial controls at all times, and, by failing to maintain appropriate fiscal controls and management systems and failing to provide for appropriate fiscal oversight by the board of trustees, has engaged in fiscal mismanagement that creates a substantial risk that the school will not be able to operate in a fiscally sound manner, as evidenced by the following:

 a. The School was cited in its FY10 independent fiscal audit for a deficiency in internal control over financial reporting. As part of the April 26, 2011 site visit to the School, the Department site visit team found that the School "provided limited evidence of strong fiscal oversight and internal controls over revenues, expenses and fixed assets. Financial policies and procedures approved by the board excluded any reference to the role of the management company in the fiscal management process" and that the School's board "currently does not have the capacity to effectively oversee the fiscal management of the school, with no systems or structures in place at the board level for fiscal oversight." Additional supporting details are provided in the site visit report. As of the conversation with the School's board chair and director of instruction and director operations on August 16, 2011, no significant changes to the fiscal oversight processes at the School were evident.

 b. Section 5.5. of the charter agreement requires the School to provide the Department with a copy of its annual budget and monthly cash flow projections no later than 45 days prior to the start of the following fiscal year. As noted previously, the projected enrollment for the School is materially lower than projected in the charter. At the time of the issuance of this Order, the School had not provided the Department with an annual budget and monthly cash flow projections for 2010-2011 or monthly cash flow projections for 2011-2012. The enrollment

assumptions for the annual budget provided by the School for 2011-12 part of its 2010-2011 annual report are not consistent with actual enrollment.

c. The School has not provided evidence of sound fiscal planning or management. Based on the balance sheet provided in its 2010-2011 Annual Report, the School's current liabilities exceeding current assets by $117,213 (current ratio of 0.73, well below industry norms) and unrestricted net assets of only $11,753, all while being housed in free NYCDOE space. The 2011-2012 annual budget provided by the School in its August 1, 2011 Annual Report submission is based on an enrollment of 255 students, while projected enrollment as reported by the School to NYCDOE on or about August 10, 2010 was only 222 students. The fact that the School billed NYCDOE for 300 students for both the July 1, 2011 and September 1, 2011 payments creates a sizable additional liability that will need to be reconciled with NYCDOE in future payments. Given such indicators that the School is in a weak financial position while occupying free NYCDOE space and the School's historical enrollment trends, it is unclear how the School will be able to absorb significant additional facilities costs that may be required in future years if free NYCDOE public space is no longer available at the end of 2011-2012.

d. To date, the School has not been able to document that it has obtained tax-exempt status from the IRS within a year of its charter approval by the Regents, as required by §2853(1) (a) of the Education L aw and §5.11 of the charter agreement.

3. **Educational Program Elements in Charter.** The School has not complied with several aspects of its charter agreement related to its educational program, including:

 a. Section 2.1 and 8 NYCRR §3.16(c). Mission Statement. The School's mission statement posted at the School differs from the one in the School's charter. Revisions to a mission statement require approval from the Department. The School has neither sought nor received such approval.

 b. Section 2.2 (ii). Age, Grade Range; Number of Students. The charter agreement stipulates, "the Charter School must obtain prior written approval from SED prior to ... (ii) commencing or continuing instruction where the total number of students enrolled is less than eighty-five percent (85%) of the Projected Enrollment..." The School's total number of enrolled students for the 2011-12 was and remains below 85% of projected enrollment (227 students as of August 19, 2011 and 246 students as of September 7, 2011 as determined by NYCDOE's Automate the Schools (ATS) system). The school did not seek approval from the Department to continue instruction until instructed to do so via a letter from the Department dated August 25, 2011.

 c. Section 2.7. School Calendar; Days, and Hours of Operation. The School's charter states that the School will provide instruction for 186 days. According to the incomplete annual report submitted on August 1, 2011, the School provided 180 days of instruction in the 2010-2011 school year.

PROBATIONARY STATUS AND REMEDIAL ACTION PLAN

Based on these violations of the Education Law and charter, the School is immediately placed on probationary status beginning on the date of this order and continuing at least until June 30, 2012, to allow for the implementation of the Remedial Action Plan outlined below. This Remedial Action Plan must be approved by the School's board of trustees **no later than 5:00 p.m. on Wednesday, October 5, 2011.** This Remedial Action Plan must be fully implemented **no later than 5:00 p.m. on December 20, 2011,**

unless an earlier date is specified below. All document submissions should be made via email to charterschools@mail.nysed.gov; jyoung3@mail.nysed.gov, and cchuang@mail.nysed.gov.

1) **Sound governance**
 a) Bring the School's board of trustees into alignment with Education Law Article 56 Section 2853(1)(f), Education Law Section 226, and Section 2.12 of the School's charter and the School's by-laws, In particular, the School must ensure that the board is appropriately constituted and functioning, considering factors including but not limited to number, composition, committee structure, regular meetings, and expertise in the skill areas necessary to govern and oversee the school from an educational, organizational, fiscal, and legal perspective. The board must demonstrate sufficient capacity to provide independent oversight of the charter school, autonomous from any other organization. In particular, the School must fill the current vacancies for all officer positions outlined in its bylaws, including the position of treasurer with an individual who possesses the professional and educational expertise commensurate with providing sound judgment and oversight of complex financial operations involving multiple entities. The addition of trustees to the School's board must adhere to the process outlined in Section 2.12 of the School's charter agreement.
 b) Establish a board meeting schedule that includes the time and place of monthly meetings. Submit copies of all board meeting agendas and materials and subsequent minutes to the Department at the same time it is issued to other members of the board each month.
 c) Submit all outstanding Disclosures of Financial Interest by a Charter School Trustee Reports in accordance with Annual Report Guidelines posted at http://www.p12.nysed.gov/psc/form.html related to delinquent annual reports for the 2009-10 and 2010-11 school years no later than 5:00 p.m. on Wednesday, October 5, 2011.

2) **Sound fiscal management and oversight**
 a) Provide a balance sheet and income statement as of the close of each month between July 1, 2011 and October 31, 2011, submitted by 5:00 p.m. on the last business day of the following month. Given the date of issuance of this probation order, the first set of financial statements through July 31, 2011, must both be submitted along with the financial statements through August 31, 2011, no later than 5:00 p.m. on Friday, September 30, 2011. The financial statements through September 30, 2011, must be submitted by 5:00 p.m. on Friday, October 28, 2011, and the statements through October 31, 2011, must be submitted by 5:00 p.m. on Wednesday, November 30, 2011.
 b) Provide the following financial documents no later than 5:00 p.m. on Wednesday, October 5, 2011:
 i) A detailed 2011-2012 annual budget inclusive of an operating surplus and measures to eliminate the School's working capital deficit. The proposed budget must be based on NYCDOE ATS enrollment totals at the school as of Friday, September 16, 2011. Additional contingency scenarios must be developed based on possible fluctuations of enrollment. The budget must include detailed personnel information including headcounts, staff titles, and salaries for all staff members. The budget must be designed to maintain an appropriate balance of revenues and expenditures.
 ii) Detailed month-to-month cash flow projection for the 2011-12 school year, which indicates positive cash flow and incorporates specific details about all cash transactions, including the use and payback of any loans as well as anticipated tuition reconciliation activity with NYCDOE for repayment of funds billed in excess of actual enrollment. This cash flow projection should provide details about all long-term, short-term or other financing (including the names of

vendors, amounts owed and terms of repayment). Supporting documentation must be provided to substantiate material items contained within the projection. This documentation may include bank reconciliations, documentation of financing charges, and copies of all contracts, consultant or loan agreements. The agreements should include the names of contractors, vendors or individual consultants and the procurement record (including bid documents, if any, used, evaluation of qualifications, or evaluations of prior services rendered).

c) Provide documentary evidence that the internal control issues noted in the school's FY10 audit issue are addressed as reflected in a FY11 audit (due November 1, 2011) with an unqualified opinion with no deficiencies noted.

d) Revise the existing Fiscal Policies and Procedures Manual to reflect the actual organizational structure the School's staffing plan (FTE's, separation of duties), resources, and practices of the School, and its financial management relationship with the BHSN. The revised manual shall include all administrative controls approved by the board of trustees including mechanisms for reporting the financial condition of the School to the trustees; procedures for soliciting long-term and short-term financing for the School. The revised manual shall also include accounting controls pertaining to the authorization, recording, safeguarding, reconciliation, and valuation of School assets. The revision shall be affixed to a board resolution, signed by the duly appointed treasurer (subject to approval by the Department), affirming the revision of the school's official Fiscal Policies and Procedures.

e) Provide the following financial documents no later than 5:00 p.m. on December 9, 2011:
 i) A balanced multi-year budget through June 30, 2014, including a detailed table of assumptions and line-item budget narrative clarifying all revenues and expenses with specific details of personnel, contracts, and facilities. These budgets must be board-approved, and evidence of board approval must be provided.
 ii) An analysis of and evidence for increased and sustained demand for seats at the school and evidence of satisfaction by parents and enrolled students (such as survey evidence).
 iii) An analysis of the school's facilities plans for 2012-2013 and beyond, including any and all fees incurred with respect to the identification of a facility for the School. Fees may include those charged for site selection, market analysis, facility management, or any related activity. The School should specify the names of all vendors and fees paid.
 iv) Copies of any evaluations conducted by the School pursuant to its management contract with the Believe Network, the approved charter, and the law. This must be accompanied by a description of the board of trustees' regular due diligence in overseeing the management agreement with the Believe Network charter management organization and include quantitative and qualitative assessments of quality by the board of trustees (including school administrators). In addition, the submission must include a discussion and documentary evidence of any actions taken by the board to determine the value of services rendered and to ensure alignment between fees paid and service delivery. This item must be accompanied by a signatory page certifying the individual trustees who participated in this evaluation process.
 v) Evidence that 501(c)(3) tax-exempt status from the Internal Revenue Service has been obtained as required by charter statute and agreement.

3) Revisions to the School's Charter

a) The School's board must consider and submit revision requests to revise the school's mission, calendar and schedule, and enrollment structure, from the version approved in the charter to those currently being used, in accordance with the Charter Revision Technical Advisory at http://www.p12.nysed.gov/psc/documents/charterrevisionTA21.09.10.seb.PDF, or bring these

practices back into alignment with those specified in the charter. Such revisions must be approved by a formal resolution of a duly constituted board of trustees.

4) **Communication with Families:** The school must provide documentary evidence that **all** parents and/or guardians of enrolled students have been informed of the probation order and the probation status of the School in two formats: written communication sent home on or before October 5, 2011 and at least one parent meeting held at the school on or before October 14, 2011, (with at least one week's notice provided). The School must make arrangements to provide translation to parents and/or guardians for whom a language other than English is the primary method of communication.

SUMMARY

In summary, the success or failure of the School rests ultimately with its Board of Trustees. It is the Board's policies, oversight of their implementation, and leadership that will set the course for the remainder of the School's charter term. The School must cooperate fully with Department staff in the conduct of site visits and other monitoring activities deemed necessary to ensure appropriate oversight of the School during its probation period. If the Board fails to implement any of the above requirements to the Department's satisfaction, fails to adequately implement any subsequent requirements, or if any additional serious violations of law or material and substantial violations of the charter should arise, the School may be subject to additional consequences pursuant to §2855 of the Education Law, including probation, revocation or non-renewal of the School's charter.

SO ORDERED.

IN WITNESS WHEREOF, I, John B. King, Jr., Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 21st day of September, 2011.

Commissioner of Education